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KELLYANN S. MONAGHAN  
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BROOKE N. ESTREN  
ERIC R. GARCIA

\* ALSO ADMITTED IN NJ  
\* ALSO ADMITTED IN CT  
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COUNSEL  
BRUCE H. LEDERMAN\*

WRITER'S E-MAIL:

blederman@dagll.com

July 27, 2009

**Via email lweiner@wilentz.com**

**Federal Express (732) 855-6026**

Lawrence C. Weiner, Esq.  
Wilentz, Goldman & Spitzer P.C.  
90 Woodbridge Center  
Suite 900, Box 10  
Woodbridge, NJ 07095-0958

Re: Borden East River Realty LLC, 11/49 Realty LLC and Simone  
Development Company, LLC; ILS # 32439 – Hunters View  
Condominium and ILS # 32438 – One Hunters Point  
Condominium

Dear Mr. Weiner:

Enclosed is an advisory opinion letter from HUD, dated July 17, 2009, specifically analyzing and addressing the ILSA exemption issues presented in the case of the Hunters Point and Hunters View Condominiums.

We believe that the enclosed definitively addresses the issues.

We are writing to offer your clients one final opportunity to close, and avoid the forfeiture of their downpayments as a result of defaults.

Lawrence C. Weiner, Esq.  
July 27, 2009  
Page 2

Please advise us of your respective clients' position within seven (7) days. We reserve the right to take all appropriate actions on behalf of our clients.

Very truly yours,



Bruce H. Lederman

BL:jb

encl.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D.C. 20410-8000

OFFICE OF HOUSING

July 17, 2009

Jose M Rivera, Esquire  
D'Agostino, Levine & Landesman, L.L.P.  
345 Seventh Avenue, 23rd Floor  
New York NY 10001

Subject: Borden East River Realty LLC, 11/49 Realty LLC and Simone Development Company, LLC; ILS # 32439-- Hunters View Condominium and ILS # 32438 -- One Hunters Point Condominium

Dear Jose M. Rivera:

You have requested an Advisory Opinion on behalf of the Developer: Borden East River Realty LLC, 11/49 Realty LLC and Simone Development Company LLC in accordance with 24 CFR §1710.17. You enclosed with your request the required fee, a comprehensive statement and the Developer's affirmation.

You represent that the Developer is commonly promoting two subdivisions, both of which are located in Long Island City, Queens County, New York. One Hunters Point Condominium contains 132 residential units, including 26 accessory Roof Terrace Units and 25 accessory Parking Space Units. Hunters View Condominium contains 72 Residential Units, including 15 accessory Roof Terrace Units and 37 accessory Parking Space Units. Between the two condominiums the Developer is offering a total of 204 residential units, including 62 accessory parking space units and 41 accessory roof top terrace units. You contend that this offering is exempt under the One Hundred Lot Exemption as set forth at 15 U.S.C. 1702(b)(1) and the Improved Lot Exemption as set forth at 15 U.S.C. 1702(a)(2).

You represent that the developer sold a total of 98 residential units (the first seventy-four (74) residential units in One Hunters Point Condominium and the first twenty-four (24) residential units in Hunters View Condominium). You state that the Developer sold these units under the One Hundred Lot Exemption. You allege that the sales complied with the anti-fraud provisions of 24 CFR § 1710.4(b) and (c) including a clause which contractually obligated the developer to complete the building.

You state that the Developer sold two other residential units pursuant to exemptions. One (1) Unit in Hunters View condominium was sold to a person who acquired the Unit for the purpose of engaging in the business of residential, commercial, or industrial resale or leasing purposes pursuant to 15 U.S.C. 1702 (a)(7). The other unit in One Hunters View was sold under the Improved Lot Exemption as set forth at 15 U.S.C. 1702(a)(2). You contend that the Hunters View unit was complete based upon a Temporary Certificate of Occupancy having been issued on February 17, 2009 and renewed as of April 8, 2009, and a sufficient bond having been placed with the New York Department of Law as an assurance for the completion of the items that were not completed at the time of the sale. You have presented a legal opinion from counsel that a Temporary Certificate of Occupancy is issued when all units can be legally occupied and are physically habitable.

You contend that the Developer will sell the remaining 58 Residential Units in One Hunters Point and the remaining Forty-eight (48) Residential Units in Hunters View under the Improved Lot Exemption. You represent that the developer will either offer completed units or, if not complete, the sales contracts will contain clauses that obligate the seller to complete the building within two years from the date the purchaser signs the sales contract. Further, the Developer represents that it will obtain either a Final or Temporary Occupancy Certificate within two years of the date the purchaser signs the sales contract. (see above) The contract will not allow for nonperformance by the seller at the seller's discretion. Finally, contracts will not directly or indirectly waive the buyer's right to specific performance.

Based on the facts cited in the comprehensive statement, the representations of counsel for the Developer as outlined above, and the affirmation from the Developer, the Department finds that the sale of the first 98 residential units were exempt under the 100 Lot Exemption and the remaining 58 Residential Units in One Hunters Point and Forty-eight (48) Residential Units in Hunters View will be exempt under the Improved Lot Exemption.

This opinion does not apply to any method or operation not fully disclosed by the Developer and does not waive any requirements of 15 U.S.C. §1701 et seq. Willful violation of the Interstate Land Sales Full Disclosure Act may result in civil money penalties and or criminal prosecution. Any questions should be addressed to Anita Hart on (202)402-2066.

Sincerely,

A handwritten signature in black ink that reads "Ivy M. Jackson". The signature is written in a cursive style with a large, stylized "I" and "J".

Ivy M. Jackson  
Director  
Office of RESPA and  
Interstate Land Sales

**Jose Rivera**

---

**From:** Jose Rivera  
**Sent:** Tuesday, July 28, 2009 1:24 PM  
**To:** 'William.Thomas@HUD.gov'  
**Subject:** Re: ILS-32439; 11/49 Realty LLC and Simone Development Company LLC; Hunters View Condominium; ILS-32438 Borden East River Realty LLC and Simone Development Company LLC; One Hunters Point Condominium;

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Best regards,

Jose

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----- Original Message -----

**From:** Thomas, William <William.Thomas@hud.gov>  
**To:** Jose Rivera; 'ledermanb@verizon.net' <ledermanb@verizon.net>  
**Sent:** Thu Jul 23 18:41:53 2009  
**Subject:** ILS-32439; 11/49 Realty LLC and Simone Development Company LLC; Hunters View Condominium; ILS-32438 Borden East River Realty LLC and Simone Development Company LLC; One Hunters Point Condominium;

Jose M Rivera, Esquire, Partner

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email: jrivera@dagll.com

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Lederman Abrahams & Lederman, LLP

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Massapequa, NY 11758

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516-551-0446

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ILS-32438 Borden East River Realty LLC and Simone Development Company LLC; One Hunters  
Point Condominium;

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#### RESPONSE

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See the last paragraph in the Advisory Opinion. The paragraph indicates that the opinion which was issued does not apply to any method or operation not fully disclosed by the Developer and does not waive any requirements of 15 U.S.C. § 1701 et seq. The paragraph also indicates that willful violation of the Interstate Land Sales Full Disclosure Act may result in civil money penalties and or criminal prosecution.

Also note that as to the 100 Lot Exemption, the Developer must comply with the Act and its anti-fraud provisions as set forth in 24 CFR §1710.4 (b) and (c).

See 24 CFR 1710.4(a). The exemptions available under 24 CFR 1710.5 through 24 CFR 1710.16 are not applicable when the method of sale, lease or other disposition of land or an interest in land is adopted for the purpose of evasion of the Act.

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Best regards,

William J. Thomas

William J. Thomas, MBA, Certified Paralegal

Consumer Protection Compliance Specialist

Office of RESPA/Interstate Land Sales

Department of Housing and Urban Development

Room 9154

451 7th Street SW

Washington DC 20410

Phone: 202-402-3006

Fax: 202-708-4559

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Re: ILS-32439; 11/49 Realty LLC and Simone Development Company LLC; Hunters Vie... Page 1 of 4

**Jose Rivera**

---

**From:** Thomas, William [William.Thomas@hud.gov]  
**Sent:** Thursday, July 30, 2009 11:10 AM  
**To:** Jose Rivera  
**Subject:** RE: ILS-32439; 11/49 Realty LLC and Simone Development Company LLC; Hunters View Condominium; ILS-32438 Borden East River Realty LLC and Simone Development Company LLC; One Hunters Point Condominium;

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Best regards,

*William J. Thomas*

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Consumer Protection Compliance Specialist  
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Thanks  
Best regards,

8/14/2009

HP000491

Jose

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New York, New York 10001  
Tel: (212) 564-9800  
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Lederman Abrahams & Lederman, LLP

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Massapequa, NY 11758

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Fax: 516 541-9232

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Re: ILS-32439; 11/49 Realty LLC and Simone Development Company LLC; Hunters Vie... Page 3 of 4

516-551-0446

email: ledermanb@verizon.net

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Also note that as to the 100 Lot Exemption, the Developer must comply with the Act and its anti-fraud provisions as set forth in 24 CFR §1710.4 (b) and (c).

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Thanks Bill.

If our copies could be emailed to us that would be greatly appreciated.

Thanks again and have a nice weekend.

Best regards,  
Jose

 cid:image002.jpg@01C91CC7.5F57A9A0

Jose M. Rivera, Esq., Partner  
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8/13/2009

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Also note that as to the 100 Lot Exemption, the Developer must comply with the Act and its anti-fraud provisions as set forth in 24 CFR §1710.4 (b) and (c).

See 24 CFR 1710.4(a). The exemptions available under 24 CFR 1710.5 through 24 CFR 1710.16 are not applicable when the method of sale, lease or other disposition of land or an interest in land is adopted for the purpose of evasion of the Act.

Please note, that what was obtained was an Advisory Opinion which was issued pursuant to 24 CFR 1710.17 as opposed to a Regulatory Exemption Order pursuant to 24 CFR 1710.16. Also note, that the term "Exempt" deals with the requirements of registration of the developments and to transactions exempt pursuant to the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 et seq, (the "Act"). See also 24 CFR 1701.3 for additional information.

Best regards,

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